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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,153	05/31/2001	Klaus David Gradischnig	P01,0183	9116
26371	7590	05/05/2005	EXAMINER	
FOLEY & LARDNER				LIN, KENNY S
777 EAST WISCONSIN AVENUE				
SUITE 3800				
MILWAUKEE, WI 53202-5308				
				ART UNIT
				PAPER NUMBER
				2154

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/857,153	GRADISCHNIG ET AL.
	Examiner Kenny Lin	Art Unit 2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 January 2005.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

1. This office action is in response to the request for reconsideration filed on January 27, 2005. Claims 1-4 are presented for examination.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Garrabrant et al (hereinafter Garrabrant), US 5,610,595.

4. Garrabrant was cited by the applicant in IDS dated 5/31/2001.

5. As per claim 1, Garrabrant taught the invention as claimed including a method of secure data transmission which is executed on a layer basis using a transmission method having possible message overhaul, comprising the steps of:

- a. Specially marking a message which is already being transmitted for at least a second time by said transmitter (col.6, lines 58-64); and
- b. Ignoring said message which is marked as having been transmitted for at least a second time by a receiver if it recognizes said message as having already been

received or if it interprets said message as a new message (col.8, lines 62-67, col.9, lines 1-8, 20-31).

6. As per claim 2, Garrabrant taught the invention as claimed including a method of secure data transmission wherein a transmitter protocol operates on a layer basis using a transmitter protocol having possible message overhaul, comprising the steps of:

- a. specially marking, by said transmitter protocol, a message which is already being transmitted for at least a second time (col.6, lines 58-64, col.9, lines 20-35).

7. As per claim 3, Garrabrant taught the invention as claimed including a method of secure data transmission wherein a receiver protocol operates on a layer basis using a receiver protocol having possible message overhaul, comprising the steps of:

- a. Ignoring, by said receiver protocol, a message which is marked as having been transmitted at least for a second time if it recognizes the message as having already been received or if it interprets said message as a new message (col.8, lines 62-67, col.9, lines 1-8, 27-31).

8. As per claim 4, Garrabrant taught the invention as claimed including a method of secure data transmission wherein a receiver protocol operates on a layer basis using a receiver protocol having possible message overhaul, comprising the steps of:

- a. Ignoring, by said receiver protocol, a message if it recognizes said message as having already been received or if, although it interprets said message as a new

message, said message is situated outside of a prescribed window (col.8, lines 62-67, col.9, lines 1-8, 21-31).

***Response to Arguments***

9. Applicant's arguments filed 1/27/2005 have been fully considered but they are not persuasive.

10. In the remark, applicant argued that (1) Garrabrant marks each message transmitted with a sequence number field which is in contrast to the invention since the claimed invention marks a message only if it is the second time it is being transmitted. There is no teaching or suggestion in Garrabrant that the initial message is not marked upon the first transmission but is marked upon a second or subsequent transmission as disclosed and claimed in the present application (see page 3, first paragraph of the remark).

11. Examiner traverse the argument:

As to point (1), in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the first transmitted message is not marked; marks a message only if it is the second time it is being transmitted) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claim language does not claim or suggest to only mark a message that is transmitted for at least a second time. Garrabrant taught

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to mark all messages and specially mark repeated message (e.g. valid or reject) and ignoring said message which is marked as having been transmitted for at least a second time by a receiver if it recognizes said message as having already been received or if it interprets said message as a new message (col.8, lines 62-67, col.9, lines 1-8, 20-31). Garrabrant clearly reads on the claim language.

*Conclusion*

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenny Lin whose telephone number is (571) 272-3968. The examiner can normally be reached on 8 AM to 5 PM Tue.-Fri. and every other Monday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ksl  
May 2, 2005

A handwritten signature in black ink, appearing to read "N. Effandy". The signature is written in a cursive style with a long, sweeping vertical line extending downwards from the end of the "y".